AF

Attorney's Docket No.: 9342-14 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Miskovic et al.
Serial No.: 10/519,809
Filed: December 30, 2004
For: SYSTEM AND METHOD FOR POWER CONSUMPTION MANAGEMENT DURING OPERATION OF AN ELECTRONIC DEVICE

Confirmation No.: 7327
Group Art Unit: 2838
Examiner: Aaron C. Piggush

Date: October 19, 2006

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 41.37)

1. Transmitted herewith is the APPEAL BRIEF for the above-identified application, pursuant to the Notice of Appeal filed on August 14, 2006

2. This application is filed on behalf of
   ☐ a small entity.

3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:
   ☐ small entity $250.00
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Respectfully submitted,

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Amelia Tauchen

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Amelia Tauchen

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed August 14, 2006 and the "Notice of Panel Decision from Pre-Appeal Brief Review" mailed September 19, 2006.

Real Party In Interest

The real party in interest is assignee Sony Ericsson Mobile Communications AB, Lund, Sweden.

Related Appeals and Interferences

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

Status of Claims

Appellants appeal the rejection of Claims 1 - 12 as set forth in the Final Office Action of June 7, 2006 (hereinafter "Final Action"), which as of the filing date of this Brief remain under consideration. Claims 1 - 12 stand rejected. Appellants submit that the claims involved in the appeal are Claims 1 - 12 as a reversal of the rejection of independent Claims 1 and 7 is requested in the present appeal and a reversal of the rejection of dependent Claims 2 - 6 and 8 – 12 is also requested based on the reversal of the rejection of the independent claims. Accordingly, Claims 1 - 12 as included in Appellants' response to the Office Action of November 29, 2005 are attached hereto as Appendix A.

Status of Amendments

A "Reasons In Support Of Applicants' Pre-Appeal Brief Request For Review" was filed in response to the Final Action in the present case.

Summary of Claimed Subject Matter

Independent Claim 1 is directed to a battery-driven electronic device that includes means for detecting power consumption that is configured to establish present power consumption during operation of the device (Specification, page 7, line 39 – page 8, line 4; FIG. 6), means for presenting data based on the established current power consumption (Specification, page 8, lines 6 – 11; FIGS. 3, 5, and 6), and means for calculating a level indicating parameter value representing the established current power consumption as a consumption level in a predetermined scale (Specification, page 8, lines 6 – 15; FIGS. 3, 5, and 6). The presented data includes an indication of the consumption level in the scale (Specification, page 8, lines 6 – 15; FIGS. 3, 5, and 6). The microprocessor unit 61 and the connection 62 provide structure for the means for detecting. The microprocessor unit 61 and the display 12 provide structure for the means for presenting. The microprocessor unit 61 provides structure for the means for calculating.

Independent Claim 7 is directed to a computer program product for a battery-driven device that includes a computer readable storage medium having computer readable program code embodied therein (Specification, page 8, lines 6 – 11; FIG. 6). The computer readable program code includes computer readable program code configured to detect present power consumption

during operation of the device (Specification, page 7, line 39 – page 8, line 4; FIG. 6), computer readable program code configured to calculate a level indicating parameter value representing the detected present power consumption as a consumption level in a predetermined scale (Specification, page 8, lines 6 – 15; FIGS. 3, 5, and 6), and computer readable program code configured to present an indication of said consumption level in said scale (Specification, page 8, lines 6 – 11; FIGS. 3, 5, and 6).

Grounds of Rejection to be Reviewed on Appeal

Independent Claims 1 and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 5,903,254 to Mundt et al. (hereinafter "Mundt").

Argument

I. Introduction to 35 U.S.C. §102 Analysis

Under 35 U.S.C. § 102, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). "Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." *Apple Computer Inc. v. Articulate Sys. Inc.*, 57 U.S.P.Q.2d 1057, 1061 (Fed. Cir. 2000). "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" M.P.E.P. § 2112 (citations omitted).

A finding of anticipation further requires that there must be no difference between the claimed invention and the disclosure of the cited reference as viewed by one of ordinary skill in the art. *See Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576, 18

U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). In particular, the Court of Appeals for the Federal Circuit held that a finding of anticipation requires absolute identity for each and every element set forth in the claimed invention. *See Trintec Indus. Inc. v. Top-U.S.A. Corp.*, 63 U.S.P.Q.2d 1597 (Fed. Cir. 2002). Additionally, the cited prior art reference must be enabling, thereby placing the allegedly disclosed matter in the possession of the public. *In re Brown*, 329 F.2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Thus, the prior art reference must adequately describe the claimed invention so that a person of ordinary skill in the art could make and use the invention.

Appellants respectfully submit that the pending independent claims are patentable over the cited references for at least the reason that the cited references do not disclose or suggest, either alone or in combination, each of the recitations of the independent claims. The patentability of the pending claims is discussed in detail hereinafter.

A. Independent Claims 1 and 7 are Patentable

Independent Claims 1 and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by Mundt.

Claim 1 is directed to a battery-driven electronic device and recites, in part:

> means for detecting power consumption that is configured to establish **present power consumption** during operation of the device;
> means for presenting data based on the established **current power consumption**;
> means for calculating a level indicating parameter value representing the **established current power consumption** as a consumption level in a predetermined scale; and
> wherein said presented data comprises an indication of said consumption level in said scale. (Emphasis added).

Independent Claim 7 includes similar recitations. According to the recitations of independent Claim 1 reproduced above, an electronic device includes means for detecting power consumption, means for presenting data based on the current power consumption, and means for calculating a level indicating parameter value that represents the current power consumption on a predetermined scale. The presented data comprises an indication of the consumption level in the scale. As discussed in the "Background" section of the Specification, one problem with conventional battery-driven devices that may be used in different modes, such as mobile phones, is that it may be

difficult to assess the remaining battery time if only the remaining time for a standby mode and/or a conversation mode are indicated. Some embodiments of the present invention may address this problem by determining the present or current power consumption and presenting the present or current power consumption as a consumption level value in a predetermined scale. Advantageously, this may provide an aid for the user to better understand how the battery is drained based on how the device is currently being used (e.g., what application may be running) and may also improve power management. (See, *e.g.*, Specification, page 7, lines 15 - 27).

Appellants respectfully submit that Mundt does not appear to contain any disclosure of determining the present or current power consumption in a battery-driven electronic device and presenting the power consumption as a consumption level in a predetermined scale. Instead, FIGS. 5A - 5D of Mundt disclose a water faucet that represents power conservation levels that are used in the notebook computer N. (Mundt, col. 6, lines 56 - 58). That is, the water faucet icon represents a particular operation mode for the notebook computer N, such as whether various features/systems are shut down. (Mundt, col. 6, line 56 - col. 7, line 24). The icons of FIGS. 5A - 5D and the icons of FIG. 4 of Mundt that display the remaining battery energy and remaining time until depletion do not determine the present or current power consumption and present the power consumption as a consumption level in a predetermined scale as recited in independent Claim 1. By determining the present or current power consumption and presenting the power consumption as a consumption level in a predetermined scale, a user may better understand how the battery is drained based on how the device is used, e.g., what applications are being run on the device. The faucet icons of FIGS. 5A - 5D of Mundt do not vary in response to the particular application being run on the notebook computer N, but instead are merely operation mode dependent.

In response to Appellants' amendment mailed March 15, 2006, the Final Action alleges that "[i]t is reasonable to interpret the faucet in Figs. 5A-D as the detection and determination of the present power consumption because it is still detecting/determining the power consumption, even if that consumption level is initially activated by the user..." (Final Action, page 6). Appellants submit, however, that the faucet shown in FIGS. 5A - 5D is not a representation of detecting power consumption to establish present power consumption as recited in the independent claims. Instead, it is merely an indication of what power conservation technique is being applied at any given time, e.g., what peripherals or other circuitry have been shut down. (*See*, Mundt, col. 6, line 56 - col. 7,

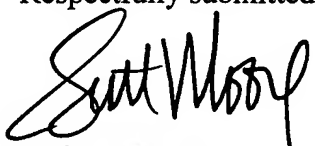
line 24). For example, even though the notebook computer is in an energy conservation mode corresponding to FIG. 5C of Mundt, the current power consumption may be greater than if the notebook computer were in an energy conservation mode corresponding to FIG. 5B if a USB port thereof is powering an external disk drive or other peripheral or a particular application were running that consumes excessive amounts of power, such as a graphics intensive application, for example. The icons shown in FIGS. 5A - 5D of Mundt, therefore, cannot be relied upon as an indication of what the current or present power consumption is at any given time. Thus, Appellants submit that Mundt does not disclose or suggest, at least, the recitations of independent Claims 1 and 7 directed to establishing the current or present power consumption, presenting data based on the current power consumption, and calculating a level indicating parameter value that represents the current power consumption on a predetermined scale.

For at least the foregoing reasons, Appellants submit that independent Claims 1 and 7 are patentable over the cited reference and that dependent Claims 2 – 6 and 8 - 12 are patentable at least by virtue of their depending from an allowable claim. Accordingly, Appellants respectfully request that the rejection of Claims 1 - 12 be reversed based on the failure of the Examiner to establish a prima facie case of anticipation under 35 U.S.C. §102 for at least these reasons.

II. Conclusion

In summary, Appellants respectfully submit that, with respect to Claims 1 - 12, the cited reference does not teach all of the recitations of the claims for at least the reasons discussed above. Accordingly, Appellants respectfully request reversal of the rejection of Claims 1 - 12 based on the cited reference.

Respectfully submitted,



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APPENDIX A

1. (Previously presented) A battery-driven electronic device, comprising

means for detecting power consumption that is configured to establish present power consumption during operation of the device;

means for presenting data based on the established current power consumption;

means for calculating a level indicating parameter value representing the established current power consumption as a consumption level in a predetermined scale; and

wherein said presented data comprises an indication of said consumption level in said scale.

2. (Previously presented) The battery-driven device as recited in claim 1, wherein said presented data comprises said level indicating parameter value and a preset value of said scale.

3. (Previously presented) The battery-driven device as recited in claim 1, further comprising:

means for calculating remaining battery time based on the established current power consumption.

4. (Previously presented) The battery-driven device as recited in claim 3, wherein said presented data comprises an indication of the calculated remaining battery time based on a current mode of the device.

5. (Previously presented) The battery-driven device as recited in claim 1, wherein said means for presenting data comprises a display.

6. (Previously presented) The battery-driven device as recited in claim 1, wherein said device is a radio communication terminal.

7. (Previously presented) A computer program product for a battery-driven device comprising:

a computer readable storage medium having computer readable program code embodied therein, the computer readable program code comprising:

computer readable program code configured to detect present power consumption during operation of the device;

computer readable program code configured to calculate a level indicating parameter value representing the detected present power consumption as a consumption level in a predetermined scale; and

computer readable program code configured to present an indication of said consumption level in said scale.

8. (Previously presented) The computer program product as recited in claim 7, further comprising:

computer readable program code configured to present said level indicating parameter value and a predetermined end value of said scale.

9. (Previously presented) The computer program product as recited in claim 7 further comprising:

computer readable program code configured to calculate remaining battery time based on the detected present power consumption.

10. (Previously presented) The computer program product as recited in claim 9, further comprising:

computer readable program code configured to present an indication of the calculated remaining battery time based on a current mode of the device.

11. (Previously presented) The computer program product as recited in claim 7, wherein said computer readable program code configured to present comprises computer readable program code configured to present said indication of said consumption level in said scale on a display.

12. (Previously presented) The computer program product as recited in claim 7, wherein said battery-driven device is a radio communication terminal.

APPENDIX B – EVIDENCE APPENDIX

None

APPENDIX C – RELATED PROCEEDINGS APPENDIX

None.